

HOUSE SUBSTITUTE

FOR

HOUSE BILL NO. 969

AN ACT

2 To repeal section 143.431, RSMo, and to enact
3 in lieu thereof two new sections relating to
4 Missouri taxable income of corporations.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
6 AS FOLLOWS:

7 Section A. Section 143.431, RSMo, is repealed and two new
8 sections enacted in lieu thereof, to be known as sections 143.431
9 and 143.435, to read as follows:

10 143.431. 1. The Missouri taxable income of a corporation
11 taxable under [sections 143.011 to 143.996] this chapter shall be
12 so much of its federal taxable income for the taxable year, with
13 the modifications specified in subsections 2 and 3 of this
14 section, as is derived from sources within Missouri as provided
15 in section 143.451. The tax of a corporation shall be computed
16 on its Missouri taxable income at the rates provided in section
17 143.071.

18 2. There shall be added to or subtracted from federal
19 taxable income, the modifications to adjusted gross income
20 provided in section 143.121 and the applicable modifications to
21 itemized deductions provided in section 143.141. There shall be

1 subtracted the federal income tax deduction provided in section
2 143.171. There shall be subtracted, to the extent included in
3 federal taxable income, corporate dividends from sources within
4 Missouri. There shall be added to federal taxable income any
5 amount defined in section 143.435.

6 3. (1) If an affiliated group of corporations files a
7 consolidated income tax return for the taxable year for federal
8 income tax purposes and fifty percent or more of its income is
9 derived from sources within this state as determined in
10 accordance with section 143.451, then it may elect to file a
11 Missouri consolidated income tax return. The federal
12 consolidated taxable income of the electing affiliated group for
13 the taxable year shall be its federal taxable income.

14 (2) So long as a federal consolidated income tax return is
15 filed, an election made by an affiliated group of corporations to
16 file a Missouri consolidated income tax return may be withdrawn
17 or revoked only upon substantial change in the law or regulations
18 adversely changing tax liability under this chapter; or, with
19 permission of the director of revenue upon the showing of good
20 cause for such action. After such a withdrawal or revocation
21 with respect to an affiliated group, it may not file a Missouri
22 consolidated income tax return for five years thereafter, except
23 with the approval of the director of revenue, and subject to such
24 terms and conditions as he may prescribe.

25 (3) No corporation which is part of an affiliated group of

1 corporations filing a Missouri consolidated income tax return
2 shall be required to file a separate Missouri corporate income
3 tax return for the taxable year.

4 (4) For each taxable year an affiliated group of
5 corporations filing a federal consolidated income tax return does
6 not file a Missouri consolidated income tax return, for purposes
7 of computing the Missouri income tax, the federal taxable income
8 of each member of the affiliated group shall be determined as if
9 a separate federal income tax return had been filed by each such
10 member.

11 (5) The director of revenue may prescribe such regulations
12 not inconsistent with the provisions of this chapter as he may
13 deem necessary in order that the tax liability of any affiliated
14 group of corporations making a Missouri consolidated income tax
15 return, and of each corporation in the group, before, during, and
16 after the period of affiliation, may be returned, determined,
17 computed, assessed, collected, and adjusted, in such manner as
18 clearly to reflect the Missouri taxable income derived from
19 sources within this state and in order to prevent avoidance of
20 such tax liability.

21 143.435. 1. As used in this section, the following terms
22 mean:

23 (1) "Affiliated group", as defined in section 1504 of the
24 Internal Revenue Code;

25 (2) "Intangible expenses and costs", includes:

1 (a) Expenses, losses, and costs for, related to, or in
2 connection directly or indirectly with the direct or indirect
3 acquisition, use, maintenance, or management, ownership, sale,
4 exchange, or any other disposition of intangible property to the
5 extent such amounts are allowed as deductions or costs in
6 determining taxable income before operating loss deduction and
7 special deductions for the taxable year under the Internal
8 Revenue Code;

9 (b) Losses related to or incurred in connection directly or
10 indirectly with factoring transactions or discounting
11 transactions;

12 (c) Royalty, patent, technical, and copyright fees;

13 (d) Licensing fees; and

14 (e) Other similar expenses and costs;

15 (3) "Intangible property", patents, patent applications,
16 trade names, trademarks, service marks, copyrights, and similar
17 types of intangible assets;

18 (4) "Interest expenses and costs", amounts directly or
19 indirectly allowed as deductions under section 163 of the
20 Internal Revenue Code of 1986, as amended, for purposes of
21 determining taxable income under the Internal Revenue Code of
22 1986, as amended, to the extent such expenses and costs are
23 directly or indirectly for, related to, or in connection with the
24 direct or indirect acquisition, maintenance, management,
25 ownership, sale, exchange, or disposition of intangible property;

1 (5) "Related entity" means:

2 (a) A stockholder who is an individual, or a member of the
3 stockholder's family enumerated in section 318 of the Internal
4 Revenue Code of 1986, as amended, if the stockholder and the
5 members of the stockholder's family own, directly, indirectly,
6 beneficially, or constructively, in the aggregate, at least fifty
7 percent of the value of the taxpayer's outstanding stock;

8 (b) A stockholder, or a stockholder's partnership, limited
9 liability company, estate, trust, or corporation, if the
10 stockholder and the stockholder's partnerships, limited liability
11 companies, estates, trusts, and corporations own directly,
12 indirectly, beneficially, or constructively, in the aggregate, at
13 least fifty percent of the value of the taxpayer's outstanding
14 stock; or

15 (c) A corporation, or a party related to the corporation in
16 a manner that would require an attribution of stock from the
17 corporation to the party or from the party to the corporation
18 under the attribution rules of section 318 of the Internal
19 Revenue Code of 1986, as amended, if the taxpayer owns directly,
20 indirectly, beneficially, or constructively, at least fifty
21 percent of the value of the corporation's outstanding stock. The
22 attribution rules on section 318 of the Internal Revenue Code of
23 1986, as amended, shall apply for purposes of determining whether
24 the ownership requirements of this subdivision have been met;

25 (6) "Related member", a person that, with respect to the

1 taxpayer during all or any portion of the taxable year, is a
2 related entity, a component member as defined in section 1563(b)
3 of the Internal Revenue Code of 1986, as amended, or is a person
4 to or from whom there is attribution of stock ownership in
5 accordance with section 1563(e) of the Internal Revenue Code of
6 1986, as amended.

7 2. For purposes of computing its Missouri taxable income
8 under section 143.431, a corporation shall add to its federal
9 taxable income any amount deducted in the calculation of its
10 federal taxable income for interest expenses and costs and
11 intangible expenses and costs directly or indirectly paid,
12 accrued, or incurred to, or in connection directly or indirectly
13 with one or more direct or indirect transactions with one or more
14 related members for the taxable year.

15 3. The adjustments required in subsection 2 of this section
16 shall not apply to such portion of interest expenses and costs
17 and intangible expenses and costs that the corporation can
18 establish by the preponderance of the evidence meets both of the
19 following:

20 (1) The related member during the same income year directly
21 or indirectly paid, accrued, or incurred such portion to a person
22 who is not a related member; and

23 (2) The transaction giving rise to the interest expenses
24 and costs or the intangible expenses and costs between the
25 corporation and the related member did not have as a principal

1 purpose the avoidance of any portion of the tax due under this
2 chapter.

3 4. The director of the department of revenue shall
4 promulgate rules and regulations necessary to administer the
5 provisions of this section. No rule or portion of a rule
6 promulgated pursuant to the authority of this section shall
7 become effective unless it has been promulgated pursuant to
8 chapter 536, RSMo.